IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6027 OF 2006

Balkrishna Laxman Khot .. Petitioner

Versus

Vijay Mahadev Khot- Aatpadkar

and Ors. .. Respondents

Mr.A.M.Kulkarni for petitioner

Mr.A.J.Chougule for respondents.

CORAM : SWATANTER KUMAR, C.J. &

S.C.DHARMADHIKARI, J.

DATE : 14th June 2007.

P.C.

. The order under challenge is passed

during the pendency of the Civil Miscellaneous Appeal No.21 of 2005.

2. During the pendency of this appeal, two applications for interlocutory orders came to be filed. These applications were numbered as Exh.39 and 40.

3. It is not disputed before me by Counsel for both parties that upon Exh.32, interim injunction was granted by the lower appellate court under Order 39 Rules 1 and 2 against respondents to the appeal, who are petitioners before me, by order dated 20th October 2005. The apprehension of the appellant before the Court below is that despite this restraint/injunction order, the petitioners - respondents to the appeal are obstructing harvesting of crops. They are not allowing original appellant to reside in the house and threatening her. It is in such circumstances, she prayed for appropriate interim

orders.

4. Application, Exh.40 was presented by the respondent appellant pointing out that during pendency of the appeal, on 2nd February 2005 respondent Nos. 1 to 4 to the appeal, partitioned the suit property amongst themselves and mutation entry No.2105 came to be effected. She prayed that after mutation entry has been effected the apprehension is that respondents would alienate and transfer the suit property and lands and thereupon, Regular Civil Suit No.52 of 2004 for partition and separate possession preferred by the appellant would be rendered infructuous.

5. Taking up these applications (Exh.39 and 40) and hearing them together, the lower appellate court passed the following order:-

"1. Application (Exh.39) is hereby

allowed with costs;

2. Police Station Kavathe Mahankal is hereby ordered and directed to give protection to the appellant in order to protect her peaceful possession over the suit properties and for cultivation of the suit properties;

3. Appellant is hereby ordered and directed to deposit the necessary charges in police station, Kavathe Mahankal to that effect;

4. Application (Exh.40) is hereby allowed with costs;

5. Respondent No.2 is hereby restrained from transferring, alienating, creating charge etc., over the suit properties till the decision of this

miscellaneous civil appeal."

6. Aggrieved by the order passed on 12th April 2006 as above present petition under Article 227 has been preferred.

7. Miscellaneous Civil Appeal against interlocutory orders passed by the Trial Court is still pending for hearing and final disposal. The impugned order has been passed on 12th April 2006 and more than a year has lapsed when parties are still at interlocutory stage. These state of affairs would assist neither of them. More so, when the suit is for partition and separate possession. It appears that parties to the suit are family members.

8. With the assistance of learned Counsel for both sides, I have perused the petition and annexures thereto including the impugned order. Although, the lower appellate Court was deciding

applications (Exh.39 and 40) which were filed during the pendency of Miscellaneous Civil Appeal No.21 of 2005, to me, it appears that while deciding them, it has made prima facie observations. It has gone into the documents which were produced at this stage. These findings which are tentative and prima facie at paras 5 and 6 would clearly go to show that some interlocutory orders are necessary to be passed during the pendency of Regular Civil Suit No.52 of 2004 for partition and separate possession. Considering the controversy involved therein and the reliefs claimed so also the parties being family members and the appellant being lady, the Court below thought it fit to pass a restraint order. Such restraint order has admittedly, been in force from 12th April 2006. In my view, disturbing the said order at this stage would not be fair and just and proper. More so, when I am of the view that interest of both sides would be sub-served if the hearing of Regular Civil Suit

No.52 of 2004 is expedited. Thus without expressing any opinion on the rival contentions and keeping them open for being urged at the hearing of the suit but being satisfied that prima facie case is made out by the appellant original plaintiff for the relief that has been granted by the lower appellate court, I pass the following order:-

a) Miscellaneous Civil Appeal No.21 of 2005 stands disposed of in terms of the order dated 12th April 2006;

b) Order dated 12th April 2006 which is passed by the lower appellate court on Exh.39 and 40 shall operate as interlocutory order during the pendency of Civil Suit No.52 of 2004;

c) Regular Civil Suit No.52 of 2004 is expedited and the trial court shall

endeavour and dispose of the same by 31st March 2008. All contentions are expressly kept open.

d) Petition disposed of accordingly. Needless to state that the trial court shall decide the suit uninfluenced by the impugned order and any observations therein so also the orders passed by this Court.

(S.C.Dharmadhikari, J)